

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6241 of 2007

Shri Gurubasappa @ Basavraj
Ravansiddappa Kalshetti ..Petitioner

vs.

1. Shri Wamanrao Viraswami
Mithapalli and anr. ...Respondents

Shri P.M.Shah for petitioner.
Shri P.G.Sarda for respondent no.1.

CORAM: S.C.DHARMADHIARI J.
3rd December, 2007

P.C.

1. The application of the petitioner has been rejected on 24th July, 2007.

2. The petition that is preferred by the present petitioner claims two reliefs, namely, that the application of Respondent No.1 who is the original Auction purchaser, be dismissed and that the sale/auction in his favour should not be confirmed. That application was filed in executing court and was numbered as 15 of 2006. On the application say was filed by the petitioner who is original opponent setting out the grounds on which the auction sale is vitiated and should not be confirmed. The petitioner stated that the property has been sold without ascertaining its market value. The

application of respondent no.1 is allowed by the executing court and while doing so it rejected the objection of the petitioners. The reasons assigned are that in the given set of facts, no judicial enquiry is contemplated. The request is for issuance of sale certificate. The proceedings before the Court in granting the certificate are Ministerial and not Judicial. Once, the sale is complete, the Court thought that it is duty bound to grant sale certificate.

3. Having perused this order with the assistance of the learned Advocates appearing for both sides, it is difficult to sustain the reasoning in as much as once the application is preferred by the respondent/auction purchaser and objections were raised by the petitioners in writing which are on record, then, I fail to understand as to how the learned Judge termed the entire act as ministerial one. The learned Judge had before him not just the request of the auction purchaser but also that of the petitioner/opponent.

4. In such circumstances, the order impugned in this petition, below Exh.1 in Application no.15 of 2006 dated 24th July, 2007 is quashed and set aside. The sale certificate, if issued, shall

be subject to further order of the executing Court.

5. The executing Court is directed to hear and decide the application preferred by the auction purchaser (Application No.15 of 2006) together with the objections raised by the petitioners/opponent as expeditiously as possible and within a period of 8 weeks from the date the parties appear before the executing court. The petition is allowed accordingly. All contentions of both sides are kept open.

(S.C.DHARMADHIKARI J.)